IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 871 of 1993
With
FIRST APPEAL No. 266 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T CORP. - Appellant(s)
Versus
KANTABEN ANILKUMAR PATEL & 4 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
MR RA PATEL for Defendant(s) : 1 - 4.
None for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.THAKER

Date : 22/11/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Both these appeals under Section 173 of the Motor Vehicles Act, 1988 are directed against the common judgment and award dated 22.09.1992 passed by the Motor Accident Claims Tribunal (Aux.), Nadiad in MACP No. 671 of 1985, by which the Tribunal awarded compensation of Rs.6,97,600/- with costs and interest at the rate of 12% per annum from the date of the claim petition to the widow and three minor children of Anilkumar Chhotalal Patel who died on account of the injuries sustained in a motor vehicle accident which took place on 22.05.1985.

2. On the fateful day at about 9 o' clock in the morning, the deceased was riding his scooter on Anand – Sarsa road, Nr. Village Chikhodara in Kheda District. The other vehicle involved in the accident was a bus belonging to the Gujarat State Road Transport Corporation. The Tribunal held that the accident was caused by 80% negligence on the part of S.T. bus driver and 20% on the part of the deceased scooterist. First Appeal No.871 of 1993 is filed by the Gujarat State Road Transport Corporation challenging the findings of the Tribunal both on the question of negligence and the quantum of compensation awarded by the Tribunal. The other First Appeal being First Appeal No.266 of 1994 is filed by the original claimants for challenging the findings of the Tribunal in so far as the deceased was held to be negligent to the extent of 20% and also on the question of quantum of compensation.

3. We have heard Mr. Hemant Shah for the Gujarat State Road Transport Corporation and Mr. R.A. Patel for the original claimants. As the appeals involve common questions of fact and law, both the appeals are being disposed of by this common judgment.

4. The broad facts are not in dispute and particularly the involvement of the two vehicles in the accident is also not disputed. On 22.05.1985, the bus being driven by original opponent No.1 – Usmanmiya Rasulmiya Shaikh was proceeding from Anand to Sarsa and was, thus, proceeding from West to East. The deceased was riding his scooter in the opposite direction from Sarsa to Anand i.e. from East to West. There is also no dispute about the fact that the accident took place at about 09:00 O'clock in the morning.

As regards the claimant's version, there was no eye-witness because the deceased was himself riding the scooter and there was no one accompanying him as a pillion rider.

5. As far as the S.T. Corporation bus is concerned, the bus driver was examined as the sole eye-witness. It was the case of the S.T. Corporation in the written statement at Exh.19 and also it was also the case of the bus driver in his deposition before the Tribunal that he was driving the bus on the correct side of the road, which was of the width of 20 ft., that a truck was coming from the opposite direction followed by an Ambassador Car and that the deceased riding the scooter was trying to overtake the Car by coming on the wrong side of the road and in the process, the scooter dashed with the bus on the right side front. The case of the bus driver was that he immediately stopped the bus and that the left wheels of the bus were on the kachcha road. It was, thus, the specific case of the S.T. Corporation and its bus driver that the bus was being driven at a moderate speed on the correct side of the road and the scooterist came over the wrong side of the road in the process of overtaking the Car which was following a truck.

6. The Tribunal found that in his police statement, the bus driver had not referred to any truck coming from the opposite direction. The Tribunal also noted from the panchnama of the

scene of the accident that there was considerable distance between the place of impact and the place where the bus was found at the time of drawing the panchnama. The Tribunal also found from the panchnama that after the impact, the bus had travelled some feet and there were also drag marks, meaning thereby, the scooter was dragged along with the right front wheel of the bus for some distance.

7. While Mr. R.A. Patel, learned advocate for the original claimants has submitted that the Tribunal erred in attributing even 20% negligence to the deceased – scooterist, Mr. Hemant Shah for the S.T. Corporation submitted that the deceased – scooterist alone was responsible for causing the accident.

8. Having gone through the judgment under appeal and having heard the learned advocates for the parties, we find that after the accident the S.T. bus had travelled some distance and had dragged the scooter along with it. If the bus was being driven at a reasonable and moderate speed, at 9 o' clock in the morning in the month of May, the bus driver would have certainly seen the scooterist overtaking the Car which was allegedly following a truck. If the bus had stopped immediately after the impact on the bus driver having applied the brake as alleged by him, then, there would have been no question of the bus travelling considerable distance and dragging the scooter along with it. Hence, the case of the S.T. Corporation that the accident was caused by the scooterist and that the bus driver was not at all negligent cannot be accepted.

9. The next question is whether there was any material on record to justify the finding of the Tribunal that 20% negligence could be attributed to the deceased – scooterist, who died on the spot.

The deceased – scooterist himself died on the spot and the scooter itself was entangled in the right front wheel and was dragged for quite some distance. The panchnama at Exh.101 indicates that the panchas identified the place of impact which was having blood marks and at the time of drawing the panchnama, the bus as well as the scooter were both found at a distance of 52 ft. away from the place of impact. The entire steering of the scooter was not only crushed, but had even got stuck with the seat of the scooter. The front wheel of the scooter along with iron ring was bent and the right front mudguard of the bus was also severally damaged. These facts are sufficient to prove that the bus was being driven at an excessive speed in a rash and negligent manner.

10. Having gone through the said panchnama and having scrutinized the evidence of the bus driver in light of his statement before the police and the panchnama, we are not in a position to attribute any negligence to the deceased – scooterist, who died on the spot on account of the severe impact. The very fact that the bus driver had not stated anything about the on coming truck in his police statement was sufficient to doubt his version. The Tribunal has not given any reason for attributing 20% negligence to the deceased scooterist. Merely because he was acquitted by the criminal Court on account of absence of any eye-witness, such a finding of the criminal Court cannot bind the Tribunal deciding the claim petition under the Motor Vehicles Act because such Tribunals have to decide the question of negligence on preponderance of probability and not by applying strict rule of proof beyond reasonable doubt. We are, therefore, of the view that the accident was caused by the sole negligence of the S.T. bus driver and no negligence could be attributed to the deceased – scooterist.

11. Coming to the question of quantum of compensation, the Tribunal found that the deceased was holding a Diploma in Civil

Engineering. It was the claimants' case that the deceased was previously working in a private firm and thereafter, had served for two years with the Taluka Panchayat and thereafter, started his own business of construction in the year 1983. The income-tax returns for 1984-85 and 1985-86 were produced at Exhs.50 and 51 respectively disclosing income of Rs.25,000/- and Rs.72,000/- respectively. It was also the claimants' case that Peerless agency was taken out in the name of the widow of the deceased, but the deceased himself was managing that business and that on account of death of the deceased, the family had no source of income. The Tribunal did take into consideration the fact that the income-tax returns were filed after the date of accident, but considering the fact that even on the date of the accident, the deceased had Rs.50,000/- in his bank account also had fixed deposits and investment and National Savings Certificates and that the deceased did have potential future earning capacity, the Tribunal accessed the income of the deceased at Rs.5,000/- per month and deducting Rs.1,500/- per month, which the deceased would have spent on himself, the dependency benefit was assessed at Rs.3,500/- per month i.e. Rs.42,000/- per annum.

Considering the age of the deceased at 40 years, the Tribunal applied multiplier of 20 years. Accordingly, the compensation for loss of dependency was calculated at Rs.8,40,000/- and adding thereto the compensation under the conventional heads, the Tribunal calculated the total amount of compensation Rs.8,72,000/-. However, deducting 20% amount for the negligence attributed to the deceased, the net figure of compensation was awarded at Rs.6,97,600/-.

12. While Mr. Hemant Shah for the S.T. Corporation submitted that the assessment of income was on the higher side and also the multiplier applied was also on the higher side, Mr. R.A.

Patel for the original claimants has submitted that looking to the educational qualifications of the deceased and the fact that he had given up not only private employment, but also his employment with the Taluka Panchayat, the income ought to have been assessed at a much higher amount and the multiplier of 20 years was rightly applied by the Tribunal.

13. Having heard the learned advocates for the parties and having gone through the judgment under appeal, we find that the Tribunal has adopted a pragmatic approach in assessing the income of the deceased. It is true that the income-tax returns were filed after the date of the accident, but considering that the deceased was holding a Diploma in Civil Engineering and that the deceased was previously employed with the Taluka Panchayat and had given up that employment to start his own business of construction, and looking to the potential earning capacity of the deceased, the monthly income of the deceased could be assessed at Rs.6,000/- p.m. Considering the fact that the deceased was supporting his wife and three minor children, the amount which the deceased would have spent on himself every month would not have been more than Rs.2,000/- and therefore, loss of dependency benefit would be Rs.4,000/- per month i.e. Rs.48,000/- per annum.

14. Coming to the question of multiplier, it is true that having regard to the age of the deceased (40 years), the multiplier of 20 years applied by the Tribunal would appear to be on the higher side. At the same time, considering the fact that the deceased was carrying on the business of construction activity and was possessing the qualification of Diploma in Civil Engineering, the deceased would not have stopped earning at the age of 58 or 60 and also taking into account the fact that the father of the deceased was alive at the age of 75 on the date of the accident, it would not be unreasonable to adopt the multiplier of 18 years. Hence, the

compensation for loss of dependency benefit would come to Rs.8,64,000/-. Adding thereto, the conventional amounts of Rs.30,000/- for loss of expectation of life, loss of consortium and for funeral and transportation charges as already awarded by the Tribunal, the total compensation would come to Rs.8,94,000/-.

15. In view of the above discussion, we dismiss First Appeal No.871 of 1993 of the Gujarat State Road Transport Corporation and partly allow First Appeal No.266 of 1994 of the original claimants. The original claimants are entitled to recover total compensation of Rs.8,94,000/- with proportionate costs and interest. Since the Tribunal had already awarded Rs.6,97,600/- with interest at the rate of 12% per annum and the said amount was deposited by the Tribunal at the relevant time, the Gujarat State Road Transport Corporation shall now deposit the differential amount of Rs.1,96,400/- with proportionate costs and interest at the rate of 8% per annum from the date of the claim petition till the date of realisation on the enhanced amount of Rs.1,96,400/- within three months from the date of receipt of a certified copy of this judgment.

16. Upon deposit of the additional amount with interest and costs as aforesaid, 90% of the amount shall be invested in more than one fixed deposits in the name of the widow of the deceased with a nationalised bank near the residence of the widow for a period of five years with the usual conditions that no premature encashment or encumbrance of the fixed deposits will be permitted without prior permission of the Tribunal and that the periodical interest accruing on the fixed deposits shall be permitted to be withdrawn by the widow. The bank shall also be instructed that the bank account shall not be permitted to be operated by any power of attorney holder other than the close relatives of the widow.

The remaining amount shall be disbursed amongst the other claimants i.e. children of the deceased in equal shares.

17. As regards the amounts which were already deposited by the S.T. Corporation pursuant to the award of the Tribunal and the orders passed by this Court in the stay application, the investments shall be renewed in such a manner that the amount going to the share of the widow shall continue to be invested in fixed deposits with the usual conditions as already stated above for another five years and out of the amounts payable to the children of the deceased who have already become major by now, 50% shall be invested in fixed deposits for a period of five years with the usual conditions as stated above.

The remaining amounts shall be disbursed amongst the claimants by account payee cheques after due verification and after informing them about the amounts being invested/ disbursed and the terms and conditions of investment.

Direct service is permitted.

[M.S. SHAH, J.]

[K.M. THAKER, J.]

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